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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866.251	05/25/2001	Thomas E. Chefalas	YOR920010343USI	4579
35526	7590	11/16/2004	EXAMINER	
DUKE. W. YEE YEE & ASSOCIATES, P.C. P.O. BOX 802333 DALLAS, TX 75380			CHANNAAJALA, SRIRAMA T	
			ART UNIT	PAPER NUMBER
			2164	

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/866,251

Applicant(s)

CHEFALAS ET AL.

Examiner

Srirama Channavajjala

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/6/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Examiner acknowledges applicant's response filed on 02 July 2004.
2. Claims 1-61 are pending in this application.
3. Examiner noted applicant's amendment to the specification on page 1, line 7-12.

Drawings

4. The drawings filed on 5/25/2001 are approved by the Draftsperson under 37 CFR 1.84 or 1.152.

Information Disclosure Statement

5. The information disclosure statement filed on 8/6/2004, 10/20/2004 comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609, and considered, a copy of PTO-1449 is hereby enclosed with this office action,
6. The information disclosure statement filed on 3/11/2004, paper no. # 2 comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609, and considered, a copy of PTO-1449 is hereby enclosed with this office action, paper no. # 3.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1- 61 are rejected under 35 U.S.C. 102(e) as being anticipated by Dunham et al., [hereafter Dunham], US Patent No. 6714952.

8. As to Claims 1, 11, 17, 24, 30, 40, 46, 56, Dunham teaches a system which including 'data processing system for backing up data' [see Abstract], Dunham is directed to backup and restore of network file server, more specifically backup and restoration of data files that are associated with application programs [see Abstract], 'responsive to a request to backup data associated with an application' [col 2, line 46-51], responsive to a request to backup data associated with an application corresponds to performing data backup operations that are associated with the data and respective application as

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detailed in col 2, line 46-51; 'querying a data store containing meta data regarding files associated with the application' [col 2, line 39-43, col 3, line 7-17, col 5, line 63-67, col 6, line 1-11, col 7, line 30-38]; 'data store includes meta data describing the files accessed by the application' [col 5, line 21-25, col 6, line 50-56, col 7, line 11-15, fig 1-2], Dunham specifically teaches metadata server associated with file(s) data and their respective attributes as detailed in fig 2-3, col 7, line 11-15; 'receiving a result in response to querying the data store' [col 7, line 39-49, line 58-60], Duham teaches particularly file system residing file servers executing specific instructions, which file system to be accessed; 'backing up the files identified in the result to a storage system' [col 8, line 1-6],

Furthermore, Duham also teaches the limitation of Claims 11,24,40,56 'copying of the files to a backup location' [col 2, line 48-51, col 8, line 1-3], transferring data and metadata to the backup storage location corresponds to copying of the file to a backup location as detailed in col 8, line 1-3, fig 4.

9. As to Claims 2,12,18,25,31,41,47,57,Dunham teaches a system which including 'files are backed up using a standard backup program' [col 3,line 7-8, col 4, line 45-46], Dunham specifically directed to use various file systems such as CIFS or common internet file systems, NFS file systems,NT and UNIX file systems as detailed in col 4 line 31-33, line 45-46, as best understood by the examiner at minimum UNIX is file system supports popular backup programs such as "dump and Restore", more

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specifically, dump, tar, cpio, therefore, standard backup programs are integral part of Dunham's teaching.

10. As to Claims 3,19,32,48, Dunham teaches a system which including 'data store is one of a database and a text file' [col 5, line 38-47, fig 1-2].

11. As to Claims 4,20,33,49, Dunham teaches a system which including 'data is located on a source data processing system and the storage system is located on a destination data processing system' [fig 1, col 2, line 46-51].

12. As to Claims 5,21,34,50, Dunham teaches a system which including 'data processing system is the source data processing system' [col 2, line 57-59, fig 1].

13. As to Claims 6,22,35,51, Dunham teaches a system which including 'data processing system is the destination data processing system' [col 2, line 61-64, fig 1].

14. As to Claims 7,36,52, Dunham teaches a system which including 'backing up step are performed by a backup process' [col 3, line 21-23].

15. As to Claims 8,37,53, Dunham teaches a system which including 'backup process is located on the data processing system' [col 3, line 2-7, line 21-23, line 29-32].

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16. As to Claims 9,13,26,38,42,54,58, Dunham teaches a system which including 'backup process is located on a data processing system with the storage system' [col 3, line 2-7].

17. As to Claims 10,14,23,27,39,43,55,59, Dunham teaches a system which including 'at least one of a hard disk drive, a tape drive and a rewrite able compact disk drive' [col 5, line 21-25].

18. As to Claims 15,28,44,60, Dunham teaches a system which including 'storage system connected to the data processing system through a network' [fig 1, col 3, line 15-21,line 6-8]

19. As to Claims 16,29,45,61, Dunham teaches a system which including 'at least one of a local area network, an intranet, the Internet, a wide area network...' [fig 1,col 3, line 15-21]

Response to Arguments

20. Applicant's arguments filed on 02 July 2004, with respect to claims 1-61 have been fully considered but they are not persuasive, for examiner's response, see discussion below:

a) At page 14, claim 1, applicant argues that Dunham teaches a method of backing up and restoring data files that are used by multi-linguistic computer networks. Dunham employs metadata files that store useful information about the attributes of data files and that aid in the translation of the data files into different languages. However, the Abstract of Dunham does not indicate that an association is present between the application and the data file.

As to the above argument [a], firstly, Dunham et al. is directed to backup and restore of multi-lingual network files, more specifically multiple metadata files that are associated with data file system [see Abstract], secondly, the basic definition of metadata means **"data about data"**; thirdly, Dunham specifically teaches relation between meta data files and single data file, further metadata defined as single parameter for an application programming interface (API) [see Abstract]. Examiner further notes that Dunham et al specifically suggests for example different file names by which a single set of file data may be referred [see col 5, line 67, col 6, line 1]. As best understood by the examiner, the association between application and data files are established through application programming interface as detailed in Abstract.

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It is also noted that applicant agree with the examiner's assertion that Dunham does teach metadata files that store useful information about attributes of data files and that aid in the translation of the data files into different languages [see page 14].

b) At page 14, claim 1, applicant argues that "the data files in the Dunham backup method may or may not be associated with a particular application. No method is taught in Dunham to make this association.

c) At page 15, claim 1, applicant argues that "neither this section, nor any other section, of Dunham mentions the association between data files and their application.

d) At page 15, claim 1, applicant argues that "nowhere does this cited section teach or disclose that the backup data is associated with an application. Nowhere does this cited reference teach that the metadata describes the files access by the application associated with the data

As to the arguments [b-d], Dunham specifically teaches metadata of a particular data file represented as a particular parameter and associated with application programming interface for a specific data file to be restored or backed up [see Abstract], further Dunham teaches performing especially remote backup operations to backup data using remote procedure call establishing relationship between respective metadata that describes specific data file as detailed in col 2, line 46-51, therefore, Dunham

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teaches not only establishing relation between data files and specific application, but also processing the request to backup data files.

e) At page 15, claim 1, applicant argues “a request to backup data associated with an application” does not correspond to “performing a data backup operation that are associated with the data and respective application”

As to the above argument [e], as explained above, Dunham is directed to backup and restoration of data, more specifically describing metadata and respective attributes [see col 2, line 16-25], also, Dunham specifically discusses variety of data formats and files required to be backed up or restored, related to different applications [see col 1, line 16-31], as best understood by the examiner, these data files or formats are created based on a particular application supported by any operating systems for example NT or UNIX file system, infact, Dunham supports variety of file systems for example NT file system, common internet file system, NT and UNIX file system [see col 4, line 36-51, fig 1], therefore, Dunham teaches association between different data files and their applications.

f) At page 17, line 4-8, claim 1, applicant argues that the passage goes on to list information that could be contained in the metadata files and therefore the catalog. However, associations of applications with the data files are not included in this list, nor mentioned anywhere in the Dunham reference.

As to the above argument [f], Dunham is directed to backup and restore of files, more specifically metadata files, and respective attributes in association with application programming interface [see Abstract], further UNIX, NT system supports various data file formats and data files for example NT file system by Microsoft or CIFS or common internet file system by Microsoft, these data files or formats are created based on a particular application supported by any operating systems for example NT or UNIX file system, infact, Dunham supports variety of file systems for example NT file system, common internet file system, NT and UNIX file system [see col 4, line 36-51, fig 1], therefore, Dunham teaches associations of applications with the data files.

g) At page 17, line 15-27, claim 1, applicant argues that Dunham actually teaches away from the presently claimed invention because it teaches a multi-computer, multi linguistic environment as oppose to a single or multiple computer system environment taught in the presently claimed invention.....

As to the above argument, Dumham teaches file servers, backup/restore server are connected in a multicomputer environment, further it is noted that applicant's fig 1, specifically describes multiple computer are connected through a network that corresponds to Dumham's multiple computers are connected in a network environment [see fig 1].

In view of above discussed reasons, examiner applies arguments to the independent claims 11,17,24,30,40,46,46 and dependent claims 2-10,12-16,18-22,25-29,31-39,41-45,47-55,57-61 respectively.

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

The prior art made of record

a. US Patent No. 6714952

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

b. US Patent No. 5649205

c. US Patent No. 5729735

d. US Patent No. 5991772

e. US Patent No. 6088694

f. US Patent No. 6279011

g. US Patent No. 6615365

h. US Patent No. 6665689

i. US Patent No 6453325

j. US Patent No 6266679

k. US Patent No 6157931

l. WO 0019337

m. EMC Data Manager, EDM Symmetrix connect, A
description of EDM Symmetrix Connect Backup published on November 1998,pp 1-9.


n. EMC² White Paper, "Backup Solutions for the Celerra
File Server, Printed May 15, 2001, pages 1-8.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Srirama Channavajjala whose telephone number is 571-272-4108. The examiner can normally be reached on Monday-Friday from 8:00 AM to 5:30 PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popvici, can be reached on 571-272-.4083. The fax phone numbers for the organization where the application or proceeding is assigned is 703/872-9306

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)

sc
Patent Examiner.
November 8, 2004.


SRIRAMA CHANNAVAJJALA
PRIMARY EXAMINER